

STATE OF MICHIGAN
COURT OF APPEALS

LOREN KYSER,

Plaintiff-Appellee,

and

BLUE CROSS & BLUE SHIELD OF MICHIGAN,

Intervening Plaintiff-Appellee,

v

HILLSDALE COMMUNITY HEALTH
CENTER,

Defendant-Appellant,

and

ARNEL LARCIA, M.D., DR. KALPESH
PANCHAL and DR. ROSS MILLER,

Defendants.

UNPUBLISHED

July 22, 2003

No. 237060

Hillsdale Circuit Court

LC No. 00-000826-NH

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Defendant Hillsdale appeals by leave granted from a circuit court order denying its motion for summary disposition in this medical malpractice action. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sought to hold defendant liable for the negligence of the individual doctors who treated him. At issue here is defendant's liability for the alleged malpractice of defendant Larcia. Plaintiff filed this action on the last day of the limitations period. The complaint was supported by an affidavit from Gary Harris, a board certified specialist in emergency room medicine. Defendant moved to dismiss on the ground that the affidavit was insufficient under MCL 600.2912d(1) and MCL 600.2169(1) because Larcia is board certified in internal medicine. The trial court ruled that because Larcia was working in defendant's emergency room at the time he

treated plaintiff, he should be held to the standard of an emergency room physician and, thus, Harris' affidavit was sufficient. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Statutory interpretation is a question of law that is also reviewed de novo. *In re MCI Telecom*, 460 Mich 396, 413; 596 NW2d 164 (1999).

A plaintiff filing a medical malpractice action is required to file "an affidavit of merit signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under section 2169." MCL 600.2912d(1). Section 2169 requires that if the defendant doctor is a specialist, the expert witness must specialize in the same specialty. If the defendant doctor is a board certified specialist, the expert witness must also be board certified in that specialty. MCL 600.2169(1)(a). In addition, the expert must devote the majority of his professional time to the practice or teaching of the same health profession or specialty as practiced by the party against whom he testifies. MCL 600.2169(1)(b), (c).

Plaintiff's expert's affidavit of merit is nonconforming. Harris was not board certified in internal medicine and there is nothing in his affidavit to indicate that, at the time plaintiff's cause of action arose, he spent the majority of his professional time practicing or teaching that (or any) specialty. The fact that Larcia may have been acting as an emergency room doctor is irrelevant. The statute provides that an expert must specialize "in the same specialty" as the defendant doctor, not that he must specialize in the area of medicine being practiced by the defendant doctor at the time the cause of action arose. *Decker v Flood*, 248 Mich App 75, 83-84; 638 NW2d 163 (2002). Therefore, we reverse the trial court's ruling that the affidavit of merit was sufficient.¹

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens

¹ We decline to rule on the legal effect of our conclusion that the affidavit of merit was insufficient. Instead, that issue should be properly briefed and argued before the trial court.